



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

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**DA 12-1264**  
**Released: August 3, 2012**

## **APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF WAVECOM SOLUTIONS CORPORATION TO HAWAIIAN TELCOM, INC.**

### **PLEADING CYCLE ESTABLISHED**

**WC Docket No. 12-206**

**Petitions/Comments Due: September 4, 2012**

**Reply Comments Due: September 19, 2012**

Wavecom Solutions Corporation (Wavecom) and Hawaiian Telcom, Inc. (HTI) (together, Applicants) filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Communications Act),<sup>1</sup> and the Cable Landing License Act of 1921,<sup>2</sup> seeking approval for the transfer of control of Wavecom to HTI.<sup>3</sup> Specifically, Applicants seek approval to transfer control of domestic and international section 214 authorizations, a cable landing license, and various wireless licenses. Hawaiian Telcom Holdco, Inc. (Holdco), the ultimate parent corporation of HTI, also requests that the Commission extend Holdco's current authority under section 310(b)(4) of the Act<sup>4</sup> regarding foreign ownership to include common carrier licenses and authorizations held by Wavecom.

Wavecom (formerly known as Pacific Lightnet, Inc.), a Hawaii corporation, is a facilities-based competitive local exchange carrier (LEC) serving Hawaii. It provides local dial tone, high-speed Internet access, long distance, special access, enhanced data, and other services primarily to business customers. It provides Voice over Internet Protocol service to a small number of residential customers. Applicants state that Wavecom provides communications services through an interisland submarine fiber optic network, the Hawaii Island Fiber Network (HIFN), which consists of approximately 400 miles of undersea fiber that connects the six major islands of Oahu, Kauai, Molokai, Lanai, Maui, and the island of Hawaii. Wavecom and tw telecom, a competing common carrier, jointly own the HIFN, which is operated on a common carrier basis. Wavecom's network also includes about 140 route miles of

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<sup>1</sup> 47 U.S.C. §§ 214, 310(d).

<sup>2</sup> 47 U.S.C. §§ 34-39.

<sup>3</sup> See Wavecom Solutions Corporation, Transferor, and Hawaiian Telcom, Inc., Transferee, Application for Consent to Transfer Control of Domestic Authorizations Under Section 214 of the Communications Act, as Amended, WC Docket No. 12-206 (filed July 18, 2012); Application of Hawaiian Telecom, Inc. and Wavecom Solutions Corporation, File No. ITC-T/C-20120716-00183 (filed July 16, 2012); Application of Hawaiian Telecom, Inc. and Wavecom Solutions Corporation, File No. 0005305989 (filed July 16, 2012). Applicants filed a supplement to their applications on August 1, 2012.

<sup>4</sup> 47 U.S.C. § 310(b)(4).

terrestrial (land-based) fiber, which includes three SONET fiber rings on Oahu. Wavecom does not currently provide video services.

HTI, a Hawaii corporation, is the incumbent LEC in Hawaii and provides service to 408,883 local access lines on all of Hawaii's major islands. Its sister company, Hawaiian Telcom Services Company, Inc., provides long distance, high-speed Internet, managed services, video services, and wireless services. HTI owns and operates a submarine undersea cable that was licensed in 1993 to GTE Hawaiian Telephone Co., the predecessor to HTI.<sup>5</sup> The cable connects four of the Hawaiian Islands and is a completely intrastate, interisland cable facility.

Applicants state that HTI is wholly owned by Hawaiian Telcom Communications, Inc., which in turn is wholly owned by Holdco, a Delaware corporation. Twin Haven Special Opportunities Fund III, L.P. (Twin Haven Fund), a Delaware limited partnership, holds an 11 percent interest in Holdco. Twin Haven Fund is controlled by its general partner, Twin Haven Special Opportunities Partners III, LLC (Twin Partners), a Delaware limited liability company, which votes the shares held by Twin Haven Fund. Twin Partners is controlled by Rob Webster and Paul Mellinger, the sole managing member of Twin Partners, each of whom is a U.S. citizen. Applicants state that Holdco common stock is publicly traded and is widely held. They further assert that, as explained below, the Commission has previously permitted HTI's indirect parent, Holdco, to be 100 percent foreign owned, subject to restrictions in which Holdco and its affiliates are currently in compliance.<sup>6</sup>

Pursuant to the terms of the proposed transaction, the shareholders of Wavecom agreed to sell to HTI all the shares of Wavecom for cash. Immediately after the proposed transaction is consummated, Wavecom will be a wholly owned subsidiary of HTI, and the Commission licenses and authorizations held by Wavecom will be indirectly controlled by HTI.

Applicants assert that the transaction is in the public interest and will result in a combined company that will be a strong competitor in Hawaii. They state that Wavecom currently lacks the resources to compete effectively for customers in Hawaii on a standalone basis. They emphasize that the proposed transaction will augment HTI's next-generation fiber capacity statewide, improve its transport backbone between islands, and allow the company to deploy next generation broadband and video services to more customers. They state that the increased network capacity will enhance HTI's ability to compete with the existing cable TV provider for broadband and multichannel video programming. Applicants contend that the proposed transaction will not adversely impact telecommunications competition because Wavecom primarily serves the enterprise and small business market, which they assert is competitive in Hawaii. Finally, they further assert that there are numerous competitive transport facilities in the Pacific Region including undersea cables provided by other carriers, as well as satellite and microwave facilities.

## **SECTION 214 AUTHORIZATIONS**

### **A. International**

The Applicants seek consent to the transfer of control of an international section 214 authorization from Wavecom to HTI. The application has been assigned the file number listed below.

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<sup>5</sup> *GTE Hawaiian Telephone Co.; Application for a License to Land and Operate a High Capacity Digital Submarine Cable System Wholly Within the State of Hawaii Linking the Islands of Kauai, Oahu, Maui and Hawaii*, File No. S-C-L-93-003, Cable Landing License, 8 FCC Rcd 7605 (Com. Car. Bur. 1993).

<sup>6</sup> Applicants state that, until October 28, 2012, Holdco is subject to restrictions preventing any person that controls 4.75 percent or more of the stock from acquiring any additional shares without prior approval from the Holdco board of directors. *In re Hawaiian Telcom Communications, Inc., et al.*, Ch. 11, Case No. 08-02005 (Bankr. D. Haw. Aug. 28, 2009) (Order Confirming Disclosure Statement, *et al.*).

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20120716-00183	Wavecom Solutions Corporation	ITC-214-20010503-00269

## B. Domestic

The Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction.

### CABLE LANDING LICENSE APPLICATION

The application for consent to the transfer of control of a cable landing licenses for the Hawaii Island Fiber Network has been assigned the file number listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Numbers</u>
SCL-T/C-20120716-00009	Wavecom Solutions Corporation	SCL-LIC-19950627-00024 SCL-MOD-20001025-00036

### SECTION 310(d) AUTHORIZATIONS

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
0005305989	Wavecom Solutions Corporation	Call Sign WQEH949

### PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

Holdco requests that the Commission extend its existing foreign ownership ruling under section 310(b)(4) of the Act, 47 U.S.C. § 310(b)(4), and the *Foreign Participation Order*,<sup>7</sup> to hold interests in common carrier licenses and authorizations to encompass Wavecom and the Commission licenses it will hold following their transfer to HTI as a result of this proposed transaction. The Commission has previously approved up to 100 percent foreign ownership in Holdco and its common carrier wireless licenses pursuant to section 310(d)(4).<sup>8</sup> Applicants state that no material changes have occurred in Holdco's foreign ownership since the Commission's foreign ownership ruling, and that it is in the public interest to extend Holdco's ruling to cover the common carrier wireless licenses it will obtain from Wavecom through this transaction.

The Petition for Declaratory Ruling has been assigned **File No. ISP-PDR-20120716-00003**.

<sup>7</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

<sup>8</sup> *International Authorizations Granted*, Public Notice, DA 10-1798, 25 FCC Rcd 13369 (Int'l Bur. 2010) (authorizing up to 100 percent indirect foreign ownership of Hawaiian Telcom, Inc. as a result of foreign equity and/or voting interests held directly or indirectly in its controlling U.S. parent, Hawaiian Telcom Holdco, Inc.).

## **GENERAL INFORMATION**

The application referenced herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file comments **on or before September 4, 2012**, and reply comments **on or before September 19, 2012**.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**In addition, provide one copy of each pleading to each of the following:**

- 1) The Commission's duplicating contractor, Best Copy and Printing, Inc., [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); phone: (202) 488-5300; facsimile: (202) 488-5563;
- 2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, [tracey.wilson@fcc.gov](mailto:tracey.wilson@fcc.gov) or (202) 418-1413 (facsimile);
- 3) Jodie May, Competition Policy Division, Wireline Competition Bureau, [jodie.may@fcc.gov](mailto:jodie.may@fcc.gov) or (202) 418-1413 (facsimile);
- 4) David Krech, Policy Division, International Bureau, [david.krech@fcc.gov](mailto:david.krech@fcc.gov) or (202) 418-2824 (facsimile);

- 5) Wayne McKee, Engineering Division, Media Bureau, [wayne.mckee@fcc.gov](mailto:wayne.mckee@fcc.gov) or (202) 418-1189 (facsimile);
- 6) Linda Ray, Broadband Division, Wireless Telecommunications Bureau, [linda.ray@fcc.gov](mailto:linda.ray@fcc.gov) or (202) 418-7247 (facsimile);
- 7) Jim Bird, Office of General Counsel, [jim.bird@fcc.gov](mailto:jim.bird@fcc.gov) or (202) 418-1234 (facsimile).

The proceeding in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>9</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Jodie May, Wireline Competition Bureau, (202) 418-0913; David Krech, International Bureau, (202) 418-7443; Wayne McKee, Media Bureau, (202) 418-2355; Linda Ray, Wireless Telecommunications Bureau, (202) 418-0257.

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<sup>9</sup> 47 C.F.R. §§ 1.1200 *et seq.*